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ABSTRACT

Legal, philosophical, legislative, historical, and international aspects of the issue of Indian tribal sovereignty and treaty rights are presented in six articles based on transcripted proceedings of a forum held at San Diego State University April 12-14, 1978. In the introduction, Sam Deloria examines various definitions of tribal sovereignty. In "Political Ethics and Indian Advocacy" Walter Koppelman notes that after 500 years of support for the principle of Indian self-government, little Indian self-government exists and that American liberty is at stake. "Sovereignty: Fact or Fiction" is a debate between Vine Deloria, Jr., and Congressman Lloyd Meeds about recommendations of the American Indian Policy Review Commission. Clara Sue Kidwell, in "Case Studies: How Sovereignty works in the U.S. Today", reports on tribal sovereignty as observed on and by the White Earth Chippewa Reservation (Minnesota), the Choctaw Reservation (Mississippi), and the Makah Reservation (Washington). Ed Castillo speaks on the preservation of Indian heritage. The topic of "Indian Sovereignty in the Americas and in the International Community" is examined by Roxanne Dunbar Ortiz and Tom Davies; they present an international perspective and examine political experiences of indigenous peoples in Latin America. The document concludes with a poem by Simon Ortiz. (SB)

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INDIAN TRIBAL SOVEREIGNTY AND TREATY RIGHTS

"We may be brothers after all.
We will see . . ."

Seattle, Dwamish chief to Isaac Stevens, 1854

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"Survival This Way," reprinted by permission of Simon J. Ortiz.

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Ed. Note:
These articles are based on the transcript of proceedings of a forum held April 12-14, 1978, at San Diego State University. The forum was sponsored by the Cultural Arts Board of the Associated Students of San Diego State University, the California Council for the Humanities in Public Policy, the National Endowment for the Humanities and the Department of American Indian Studies at SDSU.

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Introduction

— Sam Deloria

There has been much discussion in recent years about tribal sovereignty and Indian treaty rights. Let me warn you — as in many areas of political discussion, this is a conceptually thick forest. It can be beautiful and contain a lot of riches. It can also be a hiding place for thieves, robbers, and charlatans.

The discussion hasn't often enough moved to a level which is truly helpful to community leaders and community people. The concept of tribal sovereignty means nothing to any of us unless it can help us deal with the survival-threatening problems which we face today, unless it contributes to a richer life as we define it for our people.

Sovereignty is not absolute in the real world. In the real world every government has economic, political, military, practical limitations. Even the United States itself is limited these days in the exercise of its sovereignty by the very weak position of the dollar in international markets. The U.S. was militarily limited in Vietnam; we wished for a "democratic" government in southeast Asia, but the sovereign expression of that wish was limited by the conflicting desires of others.

Sovereignty is also curbed by self-limitation, as when the U.S. Constitution puts limits on the expression of this country's sovereignty. In the case of the Indian tribes, the U.S. agrees to recognize our political, cultural, and land rights. In recognizing those rights, the U.S. has voluntarily limited its sovereignty.

Tribal sovereignty issues can be defined in a number of ways. At the most abstract level we can ask whether tribes today have an international personality, whether they can be recognized internationally as sovereign entities. There are several reasons why it might be important to ask this question. The answer can tell us whether the treaties signed between the tribes and the United States have an international status and if so, what sort of status that is.

The international status of Indian tribes also affects the question of whether the treaties, already recognized as valid in U.S. domestic law, are subject to scrutiny and enforcement by the international community. If they are, the discretion of the United States to ignore them or amend them unilaterally is subject to political if not legal limitations.

Within domestic law the sovereignty question leads us to ask what form recognition of tribal rights to self-government can take. Three hundred tribal governments operate and are recognized as permanent governments in the U.S. today. Theoretically, a school child should learn that the American system of government includes the federal, the state, the county, the city, and the tribal levels of decision-making. This is a political reality that our school systems have still not acknowledged. These three hundred governments are, for the average American in school or out, all but invisible.

Of course most people are aware of the various intergovernmental issues that have put sovereignty into the headlines in various

Sam Deloria.

What we need in Congress is informed leadership, a balanced view of our problems, and wise solutions.

Sam Deloria

parts of the U.S. The all but invisible tribal governments have become highly visible, and sometimes controversial, when questions of regulation and taxation within reservation boundaries are put on the agenda, from the northwest coast to the Southwest.

Any study of the subtleties of tribal sovereignty in contemporary times leads to an awareness of the tension between the federal government's trust responsibility and the tribes' capacity and will to self-determination. The federal government, basing its position on the trust responsibility, wants the prerogative of deciding who will decide which issues for the tribes. Tribal leaders, on the other hand, want full and unrestricted decision-making powers. If the federal government has the prerogative of deciding the basic question of how decision-making should be shared, it is hard to understand how the tribes can have any version at all of true self-government. The debate on tribal sovereignty must answer two important questions, among others — on what issues does the tribal government have exclusive rights to decide, and when, if ever, does the Secretary of the Interior have final authority? Tribal leaders do not want to give up any governing prerogatives to the federal bureaucracy. However, the acceptance of full decision-making powers implies accepting full responsibility for decisons, even when they are bad.

Tribal leaders have a clear responsibility to the tribe. They must balance a desire for the economic betterment of their people and the necessity of maintaining tribal cultures intact. How should tribal leaders respond to the possibility of mineral development on tribal land (with its potentially good effect on the reservation standard of living) when the effect of such development might be detrimental to the culture? How can tribal leaders prevent the concentration of control and use of Indian trust lands in the hands of a few, to the detriment of many? How can they balance a pressing need to provide employment on the reservation with the equally demanding need to produce competitively priced products and services for the larger economy? Some tribal businesses have failed miserably when they have made employment a top priority; they have literally priced themselves out of any possible market because their labor costs were too high.

Tribal governments are indeed unique in the American political context. Nobody notices them unless they decide to regulate non-tribal members, and then everyone denies their capacity to do that. They are the only governmental or corporate entities in this society which have two entirely conflicting sets of responsibilities: providing social services for people whose educational, health, and economic level is far below that of the general population in the U.S., and running profitable and competitive businesses.

Tribal governments until recently have been advised (by federal bureaucrats and their own attorneys) that they have neither the need nor the capacity to act like sovereign governments. Until the last generation, when another wave of encroachments on tribal resources brought this question to the fore again, there was no particular pressure for tribal governments to be truly self-governing. Nevertheless, tribal decision-making has grown vastly in the area of community services, reflecting the fact that one side of the contradictory responsibilities I talked about earlier has been given

Pow-wow drum, Culture Days celebration, SDSU.

priority. Decision-making in the regulation of public and private activities on the reservation has also grown, as has the decision to begin taxing all the residents on reservation lands.

Clearly, the tribes have not in the past had the tools to enable them to exercise their rights of sovereignty within the federal system. I mentioned that this is partly due to the quality of advice given by the BIA and federal agencies to tribal leaders. The BIA is mandated to give the tribes technical assistance in the area of funding sources but has consistently failed to do so. This means that tribes have missed out on many programs that states, counties, and cities benefit from. It also means that the BIA has retained control of some activities, like school systems, which the tribes could easily have taken over. The development of a trained group of tribal people who have the expertise to run tribal governments, and the awareness to deal with the federal bureaucracy, has begun only recently and will certainly have a positive effect on the development of tribal self-government in coming years.

American policy-making operates on the pendulum theory: it goes too far in one direction, and then in order to maintain stability over the long haul, it has to go too far in the other direction.

Sam Deloria

Sovereignty is not a magic wand. No sovereign on earth is all-encompassing, every sovereign government in the modern world is limited, as is Indian sovereignty in the United States today. When we talk about Indian sovereignty we are talking about the nature of the relationship between Indian tribal governments and the U.S. Is there a qualitative difference between Turkey's request for arms (reflecting an economic and military reality) and Indian tribes' requests for technical assistance in economic development? Both requests reflect the mutual interdependence of governments in the modern world, and neither of them is an argument for a lack of sovereignty. Who can call themselves totally independent in the world today?

Sovereignty basically means the power to govern. In any concept of sovereignty — the power to govern — there is always the notion of deciding who you are, and the taking of steps to preserve your identity. Self-government is the arena for the exercise of these two functions. Self-government does not mean only power over members of your own group. What government in its right mind would say we can't deal with bandits from another group, we only have power over ourselves, not over them? Would the U.S. allow Canada to produce billions of legionnaire germs for export to the U.S. without making a move to stop them? You can be quite sure that if Canada were to decide to set up a big fan and blow those germs over the border the U.S. would step in and dismantle the fan. Self-government means you must have some effect on people who are not members of your group, either diplomatically, interpersonally, economically, or in some other way.

One of the confusions which has resulted from the present-day discussions of sovereignty in the United States is that the federal government has consistently used a narrow and unproductive conception of sovereignty, based on international politics. The U.S. asks to what extent Indian political existence meets the arbitrary international definition of a "nation-state." Indian leaders have sometimes accepted this definition, but their strongest point lies elsewhere, in a universal human reality which every country on earth has experienced.

Most of us, if not all of us, belong first and primarily to family groups, clans, ethnic groups, communities, tribes, or other less encompassing groups than the "nation-state." Only after this primary identity is affirmed do we become Afghanis, Yugoslavs, Brazilians, or Americans. To the extent that international legal and political structures ignore these primary identities, and favor nation-states, they deal in a dangerously unreal way with the world's population.

The fact that Indian tribes still exist, even after the tremendous centuries-long onslaught on their identity as well as their capacity for self-government, is a tribute and a warning. People all over the world continue to define themselves, as Indians do, first as members of smaller groups than the nation-state. If the discussion of Indian sovereignty and treaty rights leads us all to conclude that it is possible to accommodate groups within a nation-state, and to accord them certain rights, then we may offer the world a remarkable example of tolerance and mutual respect.

Sam Deloria.

There is a new calendar out that has the Moon of the Refunding Proposal, the Moon of the Appropriations Committee hearing . . .

Sam Deloria

Political Ethics and Indian Advocacy

Walter Koppelman

(dedicated to the memory of Felix Cohen, teacher and colleague.)

I'm a philosopher and I have a profound conviction that unless we create some firm philosophical bases for discussion of the question of Indian self-government and Indian sovereignty — and stick to that given philosophical point of departure — the problems will remain muddled in our own heads, and we will often wonder where we're going. I've prepared some comments that I call philosophical reflections on Indian self-government.

Not all who speak of self-government mean the same thing by the term. By self-government I mean that form of government in which decisions are made not by the people who are wisest, or ablest, or closest to some throne in Washington or in heaven, but rather by the people who are most directly affected by decisions. I think if we conceive of self-government in these matter-of-fact terms we may avoid some confusion. Let us admit that self-government includes graft, corruption, and the making of decisions by inexpert minds. Certainly, these are features of self-government in white cities and counties and so we ought not to be scared out of our wits if somebody jumps up in the middle of a discussion of Indian self-government and shouts graft or corruption.

Self-government is not a new or radical idea, at least not in my judgment, rather it is one of the oldest staple ingredients of the American way of life. Many Indians of this country enjoyed self-government long before European immigrants who came to these shores did. It took the white colonists north of the Rio Grande about 170 years to rid themselves of the traditional European patterns of the divine right of kings — what we call today the long arm of bureaucracy — and to substitute the less efficient, but gratifying, Indian pattern of self-government. South of the Rio Grande the process took more than three centuries, and there are some who are still skeptical as to the completeness of the shift.

This is not the time and place to discuss the ways in which Indian patterns of self-government were actually undermined by the patterns which the colonists first brought to this country, including feudalism, landlordism, serfdom, economic monopoly and special privilege, religious intolerance and nationalism, and the divine right of kings.

It was not only Franklin and Jefferson who went to school with Indian teachers like the Iroquois statesman Canastego to learn the ways of federal union and democracy, it was no less the great political figures of Europe, in the years following the discovery of the new world, who undermined ancient dogmas when they saw before them in the western hemisphere new societies in which liberty, equality, and fraternity were more perfectly realized than they were realized in contemporary Europe. In these societies government drew its just powers from the consent of the governed. Of course, I am referring to the American Indian tribes and to Victoria, Locke, Montaigne,

Montesquieu, Voltaire, and Rousseau. Indian liberty and self-government had provided them a new pole star in their political thinking.

I want merely to emphasize that Indian self-government is not a new or radical policy, but simply an ancient fact. It is not something friends of the Indians can confer upon the Indians. Nobody can grant self-government to anybody else. We all recall that when Alexander was ruler of most of the known civilized world he once visited the philosopher Diogenes, who was making his home in an old bathtub.

Diogenes was a rich man because he did not want anything that he did not have. He was a mighty man because he could master himself. Alexander admired Diogenes for these qualities, and, standing before him, said, "Oh Diogenes, if there is anything that I can give you, tell me and I will grant it to you." To which Diogenes replied, "You are standing in my sunlight; get out of the way."

The federal government which is today the dominant power of the civilized world cannot give self-government to the Indian community. All we can really do for self-government is to get out of the way.

In the history of western thought, theologians, missionaries, judges, and legislators for four hundred years and more have consistently recognized the right of Indians to manage their own affairs. Nothing that we could say today in defense of Indian rights of self-government could actually be more eloquent than the words of Francisco DeVitoria in 1532, or Pope Paul III in 1537, or Bartolomé de Las Casas in 1542, or Chief Justice Marshall in 1832.

For four hundred years, men who looked at the matter without the distortion of material prejudice or bureaucratic power have seen that the safety and freedom of all of us is inevitably tied up with the safety and freedom of the weakest and the tiniest of our minorities. This is not novel vision but ancient wisdom.

What gives point to the problem in 1978 is that after approximately five hundred years of support for the principle of Indian self-government in the thinking of the western world, there is so little Indian self-government. Here we have, I think, the main problem on which I should like to throw some light. I want to take some concrete examples from remarks made by Felix Cohen, who was the chief attorney for the Bureau of Indian Affairs for some years until he left the government in disgust over its policies. He spent the last few years of his life as an advocate for Indian people in this country.

In 1934, Cohen worked on a study for the Indian office of legal rights which was to serve as a guide in the drafting of tribal constitutions under the Wheeler-Howard Act. About this study he said,

> I found that the laws and court decisions clearly recognized that Indian tribes have all the governmental rights of any state or municipality, except insofar as those rights have been curtailed or qualified by acts of Congress, or by treaty. And such qualifications are relatively minor in fact.

And he then went on to say,

> When at last my job was done, and the solicitor's opinion had been reviewed and approved by the proper authorities

John Rouillard (l.) and Harold Littlebird.

of the Interior Department and properly mimeographed, I learned to my dismay that all the copies of the opinion in the Indian office had been carefully hidden away in a cabinet, and that when an Indian was found reading this opinion, the copy was forthwith taken from his hands and placed under lock and key.

Incidentally, the Indian whose reading was thus interrupted had spent more years in school and college than the men who controlled the lock and key. The Indian office was sure that the opinion, if released to the public, would be most disturbing, and I suppose they were right. The opinion was indeed disturbing to the Indian office. But its suppression was equally disturbing to Cohen. His despondency was somewhat relieved, he went on to say, when he found that Chief Justice Marshall, Pope Paul III, and Bartolomé de Las Casas had all received the same treatment.

It was of John Marshall's decision upholding the rights of self-government of the Cherokee Tribe that an old Indian fighter in the White House, President Jackson, said, "John Marshall has made the decision, now let him enforce it." The sovereign State of Georgia paid no attention to this decision of the United States Supreme Court, and the good missionary whom the Supreme Court had freed continued to languish in a Georgia prison.

What happened to Marshall in 1832 was not novel; the same thing had happened to Bartolomé de Las Casas three hundred years earlier when as archbishop of Chiapas he endeavored to read to his flock of Spanish landowners the guarantees of Indian freedom signed by the Pope and by the King of Spain. He was not allowed to read these documents by the outraged landowners of his archdiocese. In fact, he was driven from his church.

How can we explain the fact that, despite all the respect and reverence shown to the principle of Indian self-government across four centuries, there is so little of it left today? How can we explain this discrepancy between word and deed? The simplest explanation, of course, and the one that may be the easiest for some people to understand is the explanation in terms of the white man's hypocrisy. I think we must go deeper, however, into the wellsprings of human conduct and belief to understand what is happening in the field of Indian self-government.

Double talk is not always a sign of hypocrisy. Probably the easiest way of maintaining consistency in our principles is to have a second-string substitute vocabulary to use in describing any facts that do not fit into the vocabulary of our professed principles. Thus, for instance, if we believe in liberty, but can find that some particular exercise of liberty by some group is annoying to us, we may call that "license" rather than liberty.

So it is possible to talk about the virtues and values of self-government without allowing this talk to influence our conduct in any way. If professed believers in self-government substitute a vocabulary which allows them to dismiss the appeal of self-government, the second vocabulary to which they continually turn is the one that talks about a state within a state, about segregation, and about progressive assurances to integrate the Indians into the rest of the population as the solution to the Indian problem.

Now there are two answers, as I see it, to this double talk. One is to deny the cliches, and to insist that there is nothing wrong with having a state within a state, that in fact, this is the whole substance of American federalism and American tolerance. We can go on to say that the right of people to segregate themselves and to mix with their own kind and their own friends is a part of the right to privacy, the right to be different, and is one of the most valuable parts of the American way of life.

We may say further that it is not the business of the Indian Bureau or any other federal agency to integrate Indians, or Jews, or Catholics, or Negroes, or Jehovah's Witnesses into the rest of the population as a solution to Indian, Jewish, Negro, Catholic problems, or any other problem, but that it is the duty of the federal government to respect the right of any group to be different, so long as it does not violate the criminal law.

Apart from this challenging of cliches, there is a second cure for the double talk that arises in our discussions concerning Indian self-government. That remedy is to reject what other people have called "the tyranny of words," and to think in terms of facts.

Indian self-government is not something friends of the Indians can confer upon the Indians. Nobody can grant self-government to anybody else.

Walter Koppelman

The great American philosopher Ralph Barton Perry coined the phrase "the egocentric predicament" to call attention to the fact that each of us is at the center of his world. Each group is at the center of their world, and cannot help seeing the world through their own eyes and from their own position. It takes a considerable amount of sophistication to realize that the vision of others who see the world from different perspectives is just as valid as our own. One of the striking features of the administrative or bureaucratic mind is that it lacks that vision and that sophistication. Thus it often turns out that the officials who have most to say in praise of Indian self-government have a certain blind spot where Indian self-government comes close to their own activities.

For instance, when Indian Bureau officials were helping Indians draft constitutions and charters which were supposed to be the vehicles of self-government under the old Wheeler-Howard Act, all of them were very strongly in favor of self-government, and in favor of allowing all tribes to exercise the full extent of their inherent legal rights.

There was only one difficulty; the people of the education division were in favor of self-government in forestry, credit, leasing, law and order, and every other field of social activity — except education. Of course, they said, education was a highly technical matter in which tribal council policy should have no part. Education should be left to the experts, according to these experts. And where were the experts to be found? Of course, in the education division of the Bureau of Indian Affairs.

In the forestry division, there was a similar kind of activity. They were all in favor of self-government with respect to education, credit, agriculture, law and order, and everything else, except for forestry. Forestry, of course, involved matters of particular complexity and difficulty in which the experts ought to make the decision, and the experts, of course, were to be found in the forestry division.

So it was with the credit section, the leasing section, the law and order division, and all the other divisions and subdivisions of the Indian Bureau.

The result was that while every official was in favor of self-government generally, he was opposed to self-government in the particular field over which he had any jurisdiction. In that field he could see very clearly the advantages of the expert knowledge which he and his staff had accumulated, and the disadvantages of lay judgment influenced by so-called political considerations.

Felix Cohen reported that those who had been given a special responsibility for protecting Indian tribal self-government finally went to the commissioner and pointed out that if they followed the traditional practice of yielding to each expert division on matters with which it was concerned, there would be no Indian self-government. There was a long and bloody argument, and eventually the commissioner upheld the principle — which is now written into most Indian tribal Constitutions — that the Indians themselves at some point or other may dispense with supervisory control over most of their activities. That, at least, is what the charters and constitutions say. That is not, of course, what has happened in fact.

By self-government I mean that form of government in which decisions are made not by the people who are wisest, or ablest, or closest to some throne in Washington or in heaven, but rather by the people who are most directly affected by decisions.

Walter Koppelman

Unfortunately, it is not tribal decisions which we agree with that test our belief in the right of self-government. It is the decision that we loathe (and believe to be fraught with death) which tests our belief in tribal sovereignty, just as it is religious opinions that we loathe (and believe to be fraught with death) which test our belief in religious tolerance. It takes a vast amount of sophistication in philosophy to say what Justice Holmes once said, "I think we should be eternally vigilant against attempts to check the expression of opinions that we loathe (and believe to be fraught with death)." Allowing others to express opinions we agree with is no test of our belief in free speech.

May we not profit, may not the entire world profit, if in a few places in our western hemisphere, there is still freedom of native peoples to try out ideas of self-government, of economics, of social relations, that we consider to be wrong? Indeed, is there not the possibility that we can learn from their example? Have we not been learning from Indian examples for a good many years? Have we not taken over all sorts of horrifying Indian customs such as the disrespect for kings and other duly appointed authorities, the eating of poisonous plant products like tomatoes, potatoes, tapioca and quinine — not to mention cocoa?

Of course, we must always start with the assumption that we are right, or as near being right as we can. But can we not also recognize, with Justice Holmes, that time has upset many fighting faiths, and that even if we are possessed with absolute truth, it is worthwhile to have someone somewhere trying out a different idea?

I think that if government were merely a matter of wisdom and expert knowledge, Alexander Hamilton and others who have argued that it is the rich and the expert who should rule, would be irrefutable. But the answer to the Hamiltons in our history is that government is not a science. It is not primarily a matter of wisdom, or

a technique, or efficiency. Government is a matter chiefly of human hurts, and of justice. And in a justice which depends on human hurt, each of us is a more faithful champion of his own purposes than any expert.

The basic principle of American liberty is distrust of expert rulers and recognition, in Lord Acton's words, that "power corrupts and absolute power corrupts absolutely."

This is why America, despite all the lingo of the administrative experts, has insisted upon self-government rather than good government, and has insisted that experts should be servants, not masters.

And what we insist upon in a government of these United States, our Indian fellow citizens also like to enjoy in their limited demands — the right to use experts when their advice is wanted, and the right to reject their advice when it conflicts with purposes on which we are all our own experts.

The classical answer to the Hamiltonian and the Bureau of Indian Affairs philosophy of expert government is the answer given by Thomas Jefferson in a letter to the Cherokee Indians in 1808. Jefferson said, "The fool has as great a right to express his opinion by vote as the wise, because he is equally free and equally master of himself."

The issue we face is not the issue merely of whether Indians will regain their independence of spirit; our interest in Indian self-government today is not the interest of sentimentalists or antiquarians. We have a vital concern with Indian self-government because the Indian is to America what the Jew was to the Russian Czars and Hitler's Germany. For us, the Indian tribe is the miner's canary, and when it flutters and droops we know that the poison gases of intolerance threaten all other minorities in our land — and who is not a member of some minority?

The issue is not only an issue of Indian rights, it is the much larger one of whether American liberty can be preserved.

When those of us who were never Indians, and never expect to be Indians, fight for the cause of Indian self-government, we are fighting for something that is not limited by the accidents of race and creed and birth. We are fighting for what Jefferson called the basic rights of man, and in my judgment we are fighting for the last and best hope on the face of the earth.

Sovereignty, Fact or Fiction?
A debate between Congressman Lloyd Meeds and Vine Deloria, Jr.

Congressman Meeds:

I feel just a little like someone who has been asked to deliver a lecture on papal fallibility at a Knights of Columbus picnic . . .

Being here with Vine Deloria, Jr., the person whom I consider to be the most articulate and capable spokesman in the Indian world, gives me an excellent opportunity to participate in an objective discussion of a very emotional subject.

You know there are a lot of differences between fact and perception. The perception is that I have a lot of disagreement with federal policy toward American Indians, and that I changed my mind to protect my seat in Congress. So, I have seized this opportunity to talk about facts and not perceptions.

What went wrong with the American Indian Policy Review Commission? Some people don't think anything went wrong. I think that many of the Commission task force members, and many of the commissioners, misunderstood their mission. They took it as a mandate to interpret the law, in many instances, as they *wished* it to be interpreted, rather than as it really was. And they glossed over the difficult things with regard to Indians and Indian problems. They didn't deal with states' problems with regard to Indians, or the federal government's problems with regard to Indians. The Commission report was really a report by Indian advocates.

Now that is all right, but that wasn't what they were set up to do. The Commission was set up to develop some policy which could be

Ed. Note:

***The American Indian Policy Review Commission** was established by the United States Congress in 1975 [Public Law 93-580] "to conduct a comprehensive review of the historical and legal developments underlying the Indians' unique relationship with the Federal Government in order to determine the nature and scope of necessary revisions in the formulation of policies and programs for the benefit of Indians."*

Commission members were drawn from the House, the Senate, and the Indian community. Task forces conducted hearings on reservations and in urban centers to investigate the full range of complex problems which Indian people must cope with today.

In only two years the Commission gathered a remarkable collection of data on economic conditions, legislation, legal decisions, jurisdiction, education, the federal trust responsibility, and criminal justice, among other aspects of Indian affairs. Two hundred and six recommendations for change, as well as the much-debated Meeds Dissent, evolved from the work of the Commission.

A Senate Select Committee on Indian Affairs, set up to hold hearings and consider legislation, is one of the means through which the Commission's recommendations may be used to bring some order to federal Indian policy.

Congressman Lloyd Meeds.

adopted by the U.S. Congress, a policy which would withstand different administrations, different courts, and provide some kind of stability, so that American Indians would know where they were going and what they could expect in this country. And I don't think they did that. I think we missed a golden opportunity to obtain the meaningful input of Indians across the nation, and finally to develop the kind of policy which might realistically have been adopted. I personally do not think there is a ghost of a chance of adopting any of the major recommendations of the American Indian Policy Review Commission.

As I stated in my dissenting view, if the major recommendations of the American Indian Policy Review Commission were implemented it would be totally destructive to Indian culture and heritage.

First of all, the backlash of the dominant society in this country would be swift, sure, and complete — which means Indian people and Indian tribes would be resubjected to something worse than the termination policy of the 1950s.

Second and even more important, adoption of the Commission's major recommendations would subject Indian people, on and off reservations, to the kind of input from the non-Indian society which would be destructive to the very things we are trying to preserve. If these recommendations were implemented, the dominant society would then have a need to participate in Indian societies and Indian governments.

The basic problem, it seems to me, was a mistaken notion of sovereignty and its application to Indian tribes. What is sovereignty? Fundamentally, sovereignty is the power of government, the power to govern. What is jurisdiction? Jurisdiction is the extent both in territory and in subject matter of that power to govern. The majority of the Commission contended that

> An Indian tribe inherently possesses all power held by a government. The tribe continues to hold these sovereign powers until they are expressly relinquished by the tribe as in a treaty, or until they are expressly taken away by Congress. [1]

My dissenting view is that it is very clear that Indian tribes at one time held sovereignty. I don't think there is any question about that. But they lost that sovereignty through conquest, through treaties, through history, through implication. Now they exercise that degree of sovereignty which allows them to be self-governing — that degree of sovereignty which the Congress says they can exercise. Indian tribes are not sovereign to the same extent that the states and the federal government are sovereign.

Reasonable minds differ on this issue, as you well know. You can find Supreme Court decisions to sustain what I said, you can find decisions to sustain what the American Indian Policy Review Commission said, in fact, you can find Supreme Court decisions that sustain almost any position on sovereignty. Of course, that is the major problem.

The Indian tribes really have very little relationship to the U.S. Constitution; they have always been independent sovereigns at arms' length from the United States. Treaties recognized our sovereignty, and limited both the Indian tribes and the United States in how they deal with each other. That one hundred years of wrong-doing by Congress and the federal bureaucrats should dilute our sovereign powers is, I think, wrong.

Vine Deloria, Jr.

[1] *American Indian Policy Review Commission Final Report, submitted to Congress May 17, 1977, p. 101.*

Let's discuss also jurisdiction, the extent both in territory and in subject matter which the sovereign has a right to govern. Again, the majority of the Commission held that Indian tribes had the power to govern over all things not expressly taken away from them by the Congress or by treaty in Indian country, which is generally described as that area within the four corners of a reservation.

My position is that Indian tribes have the power to govern only their own members, and that the tribal government is a purposive government. Congress' action allows the first Americans to set up tribal organizations and governments and to govern themselves so as to preserve their heritage and their uniqueness and their Indianness. I think almost any student of Indian history will tell you this is not only best for Indians, it's best for this nation.

We have been through all kinds of cycles in American Indian policy, including the termination cycle, which was disastrous. I don't think anybody who has studied the problem wants to see Indian tribes powerless to govern themselves.

But that is different from saying that they should have the power to govern the lives of people who are not members of their tribe. Again, reasonable minds differ on this question of jurisdiction and you can find cases to support almost anything. I am suggesting to you that both for the best interest of Indian tribes and Indian people, and for the concept of our constitutional form of government, this approach would solve some of the problems we are talking about, rather than creating a lot of new ones.

First of all, I would suggest that if Indian tribes had total, or anywhere near total, jurisdiction over non-members of the tribe on reservations, the members of white society who come under that sway would then have an interest in being involved in the governmental process, changing the very structure of Indian tribal government so as to make it more nearly representative of their views of what government ought to be.

Vine Deloria, Jr.

Let me give you an illustration of what I'm saying. The Lummi Indians, located just north of Bellingham, Washington, are now in the process of putting in a sewer system on their reservation. And they are going to run it. The non-Indians, who probably outnumber the Lummis four or five to one on the reservation, want to be involved in where that sewer goes and how much it costs to get hooked up, as well as a lot of other things. They want to be involved, and they should be involved. But the Lummis aren't ready to get involved. They do not want to make non-Indians members of the tribe so they can vote. The non-Indians can contend, of course, that they do not have representation.

The first thing our Constitution guarantees us is a republican form of government — a representative form of government. Non-members of tribes who reside on reservations, whose daily lives are affected by tribal council decisions, are being deprived of a very, very basic right under the United States Constitution if they have no input in the decision-making process. Now, I could say that people in Washington, D.C. were deprived of that right for a long time. That is correct, and it is also deplorable. The fact that it happened to the people of Washington, D.C. is no reason it should happen to people on Indian reservations.

I have just covered one of the major problems which I had with the American Indian Policy Review Commission. The report of the majority was not realistic. It's not going to go anywhere. It's not going to become the vehicle for legislation which will shape policy for American Indians and for other Americans. Policy will continue to be subject to the whim or philosophy of each administration. As I said in my dissent, there are many good things in that Commission Report. But I also said, "The valid and achievable recommendations will be lost in a cloud of controversy over others which are neither legally sustainable and/or politically achievable."[2]

Now there are people in this country, including your own leaders, who are going to tell you that the American Indian Policy Review Commission recommendations are attainable. I could do that, you know; it would be nice to be popular. But I would not like to see you disenchanted with the process. And that is just what is going to happen to American Indians if they believe that the recommendations of the American Indian Policy Review Commission, particularly the major ones, have a ghost of a chance of becoming law.

Vine Deloria, Jr.:

Congress will be much poorer by not having Congressman Meeds there as a representative.

When the Abourezk Commission was coming into existence, I gave testimony in the Senate on behalf of that Commission because I hoped that they would authorize Senators and Congressmen to go to Indian communities in the same way that the Senate Indian Committee did from 1928 to 1936, to actually see the conditions under which people lived and to introduce remedial legislation clarifying the many small things that can be resolved on the reservation, without getting into major controversies and conceptual arguments on Indian policy. However, the bill was already amended in the Senate, and when it got to the House, when they were picking people to work on these task forces and Congressman Meeds called me, I expressed deep reservations and dissatisfaction with that Commission and refused to participate in it.

Indian tribes are not sovereign to the same extent that the states and the federal government are sovereign.

Congressman Lloyd Meeds

The problem that I see with the majority and with the minority dissent — and in this I differ substantially with Congressman Meeds — is that the majority is correct legally and historically in their description of the status of Indians and how Indian tribes arrived at their present status in law. However, I agree with Congressman Meeds that having established this position, the majority then wanders off into some fantasyland, as if Congress could impose that sort of ideology on itself or on the American public. I think the good thing about Congressman Meeds' dissent is that it is realistic in terms of 20th-century America. He recognizes the forces that are at work here, that you simply are not going to get Congress to pass a law saying they will never abrogate another Indian treaty.

Having said that, I'd like to bring up some specific points from Congressman Meeds' dissent to document where I think the inaccuracies are. For example, on page 583:

[2]*The Meeds dissent is part of the American Indian Policy Review Commission Final Report, pp. 571-612.*

> On the other hand, the relationship between the United States and other tribes is characterized by war and destruction and these relationships culminated in peace treaties; it is simplistic to say that the Indians reserved anything to themselves. It is clear in most instances that the U.S., as the victorious party, dictated the terms of the treaty and reserved for the Indians various parcels of land.

If you look through the bulk of the materials available that deal with treaty negotiations, you will find very few instances of tribes actually being defeated by the U.S., and consequently being forced to sue for peace. More often what happens in American history is that there is a kind of border conflict with small parties of Indians or soldiers involved in the context of a changing frontier. To prevent war the United States comes out with a Peace Commission to try to resolve future disputes that tribes will have with the United States and with settlers coming in.

Consequently, in some of these treaty provisions the Indians do in fact reserve particular things for themselves. Those things are rights that are recognized in the laws of the nation, continually upheld by the Supreme Court, and continually recognized by different Congresses, as aboriginal rights to self-government, to hunting and fishing, and to various peculiar things that Indians enjoyed prior to the coming of the white man.

The problem is that historical inaccuracies have been written into the legislation or Supreme Court cases and they become extremely difficult to correct. I think the majority of the Commission understood what the history of Indian tribes was and then thought that Congress, by passing a law, could get the rest of the United States to understand this "new" view of history. So when Congressman Meeds complains in his dissent that you can't rewrite four hundred years of history, I think what he is really saying is that a certain version of history has become so deeply ingrained in America's consciousness that it is virtually impossible to change it by legislative action. What we're talking about is a very long-term, well-concentrated educational process; it may take a hundred years to correct the inaccuracies that have crept into American history to become the basis of doctrines that tear away at the heart of Indian communities.

Had we united, you would not have a Constitution or a nation. Unfortunately, we were too busy passing resolutions and fighting with each other to get the job done.

Vine Deloria, Jr.

Felix Cohen, the great expert on Indian rights, began an essay with these words: "Indian tribes have inherent tribal sovereignty." A majority of commentators in the majority of cases have, I think, upheld Indian sovereignty. The question is: in practical terms how do you exercise that sovereignty today? Once you reach the practical level then your immediate problems are in dealing with non-tribal members living on the reservation, with white neighbors, and with the off-the-reservation tribal members who live nearby.

Those are extremely difficult problems and they can't be resolved by legislative action. They have to be resolved by some kind of mutual agreement which binds Indians, non-Indians, and non-tribal members.

A theme I find very disturbing in Congressman Meeds' dissent is the confusion as to what we are talking about when we talk about "Indian lands." For example, Congressman Meeds says: "Mere ownership of lands in these United States does not give rise to

governmental power. Governmental power has as its source state and federal constitutions" (pages 573-574). Further on he says,

> It would seem there must be authority in the Secretary of the Interior to override the decisions of tribal leaders themselves, because the land in question is ultimately federal in ownership, because the Secretary, unlike tribal leaders, is responsible to both Indians and to non-Indians, and therefore is better able to resolve the conflicts that may arise between such groups.

I think a majority of the courts uphold the fact that an Indian title is as sacred as any other title. But each tribe is a nation that has placed itself under the protection of the United States. It cannot turn around and sell lands either to a citizen of the United States or to any foreign country. And what we're talking about is a basic protectorate relationship that derives out of international law with respect to land. The passage of two hundred years and the surrounding of Indian reservations by non-Indian society makes it seem as if the government has given Indian reservations to Indians, and that the Indians exist there at the whim of the government. But Indians do not, at least in theory, exist there at the whim of the government.

Of course, in practical terms, if Congress takes over those lands by a wide majority, you can rely on the Supreme Court to go along with the Congress. This would be a very difficult, very unjust legal situation. The legislative branch has acted and the federal courts, not wanting to create any more controversy than they must, are going to uphold the Congress by saying that the Constitution provides that Congress has power over Indian affairs. The difficulty in dealing with the status of Indian tribes and in dealing with Indian land title is that there are 220 million Americans and only one million Indians. The law, at the bottom line, is what the people with the most guns and bayonets say it is.

Now I think that the majority of the Commission should have realized this, confronted it, and found another more sophisticated way of presenting the theoretical position. On the other hand, the realistic recognition of naked political force should not make you go back and take a minority position with respect to Indian sovereignty and Indian land title.

Another disturbing aspect of the dissenting opinion is the number of instances in which a great fear of Indian/non-Indian relationships, based I think on racial considerations, is expressed. I am not accusing Congressman Meeds of casting racial aspersions against Indians. The majority of this dissenting opinion was prepared for him by someone else, and I think in some sense there must have been agreement that the dissenting opinion should represent some of the feelings of the non-Indian public toward Indian subject matter.

I think what the dissenting opinion attempts to do is to bring forward a dimension which the majority didn't consider, namely that there are people who simply don't like Indians. There are a lot of people who believe that Indians have special privileges. These people form their opinions of how Indian policy should be conducted primarily on an emotional basis, and it is to our discredit that Indians respond emotionally as well.

Pow-wow dancer

On page 571 in Congressman Meeds' dissent, he says, "Despite contemporary litigation most Americans are justified in believing that four hundred years have been sufficient to quiet title to the continent." Well, if you had seriously, sincerely, and with some purpose, attempted to do that for four hundred years, it should have been sufficient. In point of fact the U.S. has not tried to quiet title to the continent. On the contrary, Congress, the courts, and the executive branch have been busy trying to bury everything that has happened for four hundred years, leaving a great many burning legal questions — Indian status, Indian land claims, the nature and scope of treaty rights — undecided. The passage of time does not necessarily nullify all wrongs or turn them into new kinds of rights.

Congressman Meeds mentions in his dissenting opinion in a number of places the very real problems of jurisdiction. He points out directly that Congress does not have the legal duty to resolve some of these questions. However, many of the jurisdictional problems we are having, particularly with non-Indians inside reservations, are the result of Congressional action. In the Burke Act of 1906 Congress demanded that the Bureau of Indian Affairs issue certificates of competency to the Indians, and begin to open up free land inside reservations. If we have jurisdictional problems in those areas it is not because Indian tribes do not have inherent sovereignty. It is at least in part because Congress itself has passed statutes enticing non-Indians to come onto the reservations. The Congress could pass statutes enticing people to leave those reservations. The Congress, instead of adding to the criminal code, could be looking at repurchase of free land within our reservations to return the reservations to solid Indian ownership.

Congressman Meeds also points out that there is great difficulty with the question of Indian tribal government taxing non-Indians within the reservation. I think that if Indian tribes were to attempt to levy discriminatory taxes on non-Indians on the reservation, this should not be permitted. What I do think we have to talk about in terms of taxation is nondiscriminatory taxes levied by tribal governments. Income taxes, for example, should apply to all people living within reservation boundaries. We can't attempt to tax non-Indian cattlemen while our tribal council members have big cattle herds and don't pay any kind of taxes. This is a difficult thing for Indian tribes to confront, because too often the most influential people on the tribal council are the people using tax immunities to build up their estates; they are Indians.

I think that Congressman Meeds is absolutely right when he says that where tribal governments are used in a manner that the non-Indian public perceives as unjust you are going to get a tremendous backlash. Insofar as you recognize that problem — and it is a real problem — it should be dealt with. I don't think the corresponding argument — that Indians have no sovereign power to tax — holds water. The Supreme Court cases continue to say, in the majority, that the sovereign powers which existed before the Constitution of the United States continue to exist until, by agreement or Congressional Act, they are taken away from the tribe.

Congressman Meeds also mentions that a number of non-Indians come onto reservations and use Indian immunities for their own

benefit. I think part of this problem derives from the activities of the Bureau of Indian Affairs fifteen to twenty years ago when they attempted to entice industry to reservations by allowing non-Indians to take certain benefits that only Indians should have. This is one thing that Indians have to correct in the very near future. Congress does not have a moral or legal right to dilute Indian rights because non-Indians are breaking the law.

The basic problem is one that neither Congressman Meeds nor I can solve. It is inherent in the federal constitutional system. The Constitution of the United States splits its sovereignty between two governments — federal and state — which occupy the same geographical space but have different functions. The problems Indian tribes have with both the federal government and state governments are the same problems that local communities and states have with the federal government and with each other. For example, Congress has been working for years to clear up the confusion in the federal criminal statutes, which sometimes provide two sets of laws for the same criminal act in the same geographical area. The thing is total chaos.

The passage of two hundred years and the surrounding of Indian reservations by non-Indian society make it seem as if the government has given Indian reservations to Indians, and that the Indians exist there at the whim of the government.

Vine Deloria, Jr.

I bring this up because I think this problem transcends Indians. There are all kinds of situations today in which the states have in effect given up their governing powers and act as if they were federal units rather than independent sovereigns. This movement has, of course, come into direct confrontation with Indians, who are asserting a separate sovereignty, saying that they are not creatures of the federal system.

Let me close with what I hope will be a sufficiently provocative statement. The differences between Congressman Meeds and myself must ultimately revolve around the concept of Indian sovereignty. The ideology and theoretical framework of the Meeds dissent is based on the claim that the U.S. Constitution only mentions two sources of power — federal and state. These then are the only two sovereigns. This is the greatest historical inaccuracy I find in the report. The U.S. Constitution was formed in 1787. In 1787 the Indian tribes were a different, independent sovereignty. There was no reason in the world for the United States Constitution to include Indians as deriving sovereign power from it. Indeed, had we united, you would not have a Constitution, or a nation. Unfortunately, we were too busy passing resolutions and fighting with each other to get the job done.

The Indian tribes really have very little relationship to the U.S. Constitution; they have always been independent sovereigns at arms' length from the United States. Treaties recognized our sovereignty, and those treaties limit both the Indian tribe and the United States in how they deal with each other. That one hundred years of wrong-doing by Congress and the federal bureaucrats should dilute our sovereign powers is, I think, wrong.

Congressman Meeds:

Sovereignty does have to be viewed in historical context. I don't think there is any question that when the treaties were signed with the Cherokees, the Creeks, and some others, way back when, they

were dealt with as sovereign nations. It was the intent of this government, which we're all a part of now, to continue to deal with them as sovereign nations. That continued, I think, into the 1860s and 70s when the Congress provided by statute that we weren't going to deal with them as sovereign nations any more, and stopped signing treaties with them. In 1924 all Indians were made United States citizens, except those who were already made citizens when they accepted allotments under the Allotment Acts in the 1880s. Now it appears to me that the Supreme Court has interpreted the sovereignty of Indian nations and Indian tribes so as not to impair the overriding sovereignty of the United States and the states. And I would suggest to you that from the standpoint of dividing jurisdictional responsibilities, much of the sovereignty which you assert belongs to Indian tribes could still reside with them, without impairing or threatening the sovereignty of the United States or the states, if it weren't for the Allotment Act, and the in-holdings that resulted from it.

In other words, I am sure this country could see a lot more sovereignty on the Navajo Nation Reservation than it is going to see on the Lummi Reservation with all of its in-holds. The major problem comes when there are many non-tribal members over whom jurisdiction has to be exercised. If there aren't many non-tribal members on the Navajo Reservation things go pretty well there, there is not much need for the federal government to intervene there. The court system works better there; everything works better there.

But I am suggesting that the political world — through the Congress or through the courts — is not going to allow the Constitutional concepts of the sovereign United States to be threatened by the notion of Indian sovereignty. It is just not going to happen. The United States will not see 254 Quebecs in its midst.

With regard to the question of taxation, I personally wouldn't have any great qualms about being taxed by a tribe. But if I were going to be taxed, or regulated in some way, I would want to have some input. To say that tribes ought to be able to tax non-members really misses the point: non-members ought to be involved in the determination of what the tax is. I don't need to say that we fought the Revolutionary War over that very concept, and I think the American people still feel that way.

I think that most of the more recent decisions in the contemporary world will, as you suggest, say tribes retain that sovereignty which they did not, by agreement or by Congressional Act, either give away or have taken away. But the decisions also add, given away "by implication," a very important addition in terms of understanding what the courts are doing and what Congress, if it ever decided to act, would do.

You say that because of a lack of understanding of American history, it is impossible to effect change by legislative action. You are probably right. But I like to hope that maybe we can effect change by legislative action. I agree that we have to go through this business of understanding American history better, that we simply don't understand American history nearly as well as we ought to.

What we're talking about is a very long-term, well-concentrated educational process. It may take a hundred years to correct the inaccuracies that have crept into American history to become the basis for doctrines that tear away at the heart of Indian communities.

Vine Deloria, Jr.

But this is all part of the great agony that I had over the American Indian Policy Review Commission. I felt the Commission could have been the vehicle to bring forward that history, that kind of input from Indians themselves, which would lead to an enlightened Congress adopting a long-range policy. A lot of things have intervened, forces beyond your control and mine, which have tended to sour a once favorable climate in which to legislate.

I still think that legislation can prevent the kind of abrupt changes we saw between the Truman administration, which was relatively enlightened for that period, and the Eisenhower administration, when we were suddenly faced with a policy of termination.

Vine Deloria, Jr.:

The Citizenship Act, in terminating the treaty-making powers of Indian tribes, did not change the legal status of Indians. (Meeds: "I agree.") Let me quote from the treaty-making power disclaimer, "Providing further that nothing herein contained should be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian tribe or nation," and further, "Provided the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property."

In terms of the Citizenship Act, what is the tribal or other property they are talking about? There are a number of Supreme Court decisions which say that the right of Indians to hold their land in communal status and to act as an Indian community is the compensable property right. This is the right that the civilized tribes traded with the United States in accepting allotments, tax exemptions, and other benefits. Indian sovereignty, in a certain format, can be turned into compensable property rights.

You said, in describing American history since 1871, that there is a repeal of treaties by implication. This is one of the things Indians object to most of all in legal dealings with the United States — the assumption by non-Indians in the Congress and in the bureaucracy that if the United States violates one article of a treaty then the rest of the treaty falls. That is not good international law. In international law you can violate one article of a treaty, but the other articles of the treaty remain intact. For example, the property of German and Italian nationals during both world wars was protected intact under previous treaties with the United States, even though those nations were at war with the United States.

The United States Congress, following the war with the Sioux in Minnesota, passed a statute saying, "We hereby abrogate community rights of all Indians who fought against the United States in the Minnesota war." I think the Commission should have made it absolutely clear that no treaty rights should be implied to be abrogated unless Congress has specifically spoken. The Supreme Court and the Congress continually imply that if you have the federal power to do something, you can walk in and preempt anything within the states. Much civil rights legislation ten years ago was based on overriding federal concerns; using the Interstate Commerce clause as

a basis, federal laws were passed for municipalities. This isn't simply a pernicious thing directed against Indians so much as it is a trend of legal thinking.

This brings me to a point I wanted to make so as to perhaps convert you before you get off the podium. You say in your dissent that the trend is away from the idea of inherent Indian sovereignty and toward applicable treaties and statutes which define the limits of state power.

What the Supreme Court is doing is a complete "Catch 22." We are not going to talk about Indian sovereignty, we are going to talk about applicable treaties and statutes. What do the applicable treaties and statutes say? The Winans case, for example, states that whatever the Indians didn't give away, the Indians reserved. This case uses the treaty with the Yakimas and plainly states that what the Indians didn't specifically give away in the treaty is reserved for the Indians. The Supreme Court, looking at this, can't say "we reject Indian sovereignty but we rely on the treaty," because if you rely on the treaty, you are upholding Indian sovereignty. The problem is that this type of logic has become so ingrained in the minds of the policy-makers that they can't distinguish the two. I think you can maintain inherent Indian sovereignty. The minute you do that, you are talking about specific treaties and statutes. There really can't be any major federal Indian policy or federal Indian law apart from the inherent sovereignty of Indian tribes.

To illustrate the reason why I wanted the Commission to go out and look at the condition of Indian communities, instead of sending task forces: three years ago the Commissioner of Indian Affairs came to my reservation and made a speech apologizing because the federal government didn't have sufficient money in the revolving loan fund to help tribal development. And he said, "We don't even have sufficient manpower to appraise the lands the Indians want to sell, and to get those lands sold." My tribal chairman said, "This is crazy; we don't want to sell any lands. There are 23 ranchers on this reservation who want to sell to us, and we don't have any money to buy the land." There is where the problem is. It is not that we want to sell land. The non-Indian wants to sell to us, and we don't have any money to do it.

In 1964, it was estimated that the federal government was spending twelve to fifteen million dollars a year simply to keep track of the records of Indian lands. I submit that if we had taken that twelve to fifteen million dollars and put it into land purchase, we could have resolved problems on the Lummi Reservation or any other reservation. I think our problem is with Congressional people who simply have no knowledge of what is going on in Indian country and who are not willing to look at alternatives. They are willing to spend three or four million dollars a year on education to try to motivate Indians to become something else. But if you take that same money and put it simply into land purchase, you can clear up a lot of problems. Those are the kinds of solutions I wanted to see the Abourezk Commission come up with.

All of this goes back, consistently and logically, to the idea of Indian tribes as protected dependent domestic nations. In advocating that theory we have to turn to Indian tribal governments and say that

it is the responsibility of Indians to make those tribal governments act responsibly, as if they occupied the status of dependent domestic nations. It is going to be more painful for the Indians, in a practical sense, to maintain their theoretical position. Many of our leaders and our programs act as if they were high school students running around at the expense of Uncle Sam. We have all got to admit that. That may not be a popular position but I am going to keep on saying it until Indian tribal councils and Indian governments begin to act responsibly toward their own people and toward outsiders.

The only conclusion that I can come to is that Indians are a dependent domestic nation. I think if you'd adopt that posture, Congressman, you could join the mainstream of legal thought with me and still recognize there is a great deal of reform to be done.

Question from the audience:

Congressman Meeds made a comparison between the geographical and modern social and legal circumstances on the Navajo Reservation and the Lummi Reservation. What I would like to understand is how you can logically justify trying to deal with these differences in one lump of national legislation? To me, it's like trying to deal with the problems of New York City in the same way as you deal with the problems of Holtville, California. They are so incredibly different.

Congressman Meeds:

It would be nice to be omnipotent, to know all the subtleties, and to be able to enact laws which applied to all of them. I think we have to act on some basic principles, which will apply to the Lummi Reservation and to the Navajo Reservation. It will be easier, of course, to maintain a unique "Indianness" on the Navajo Reservation than it will be on the Lummi Reservation, because of the in-holdings there. The basic principle, however, would still be the same. That is, whoever lives on a reservation must have some input, some representation in the decision-making body.

Vine Deloria, Jr.:

One of the things I had hoped the Commission would do was to go step by step into the something like 19 unratified treaties here in California. I had hoped that through such case studies the Commission would say, "We have, in effect, moved into the occupancy area of these people. We promised them this treaty, which was buried in the archives. Now we affirm this was a good treaty because it was acted upon by both parties and therefore they have protectable rights."

There are some instances where it would be absolutely ludicrous to enforce treaty rights. On the Columbia River, in the years prior to the 1820s, the Chinook nation was fifty thousand strong. The winters of '29, '30 and '31 reduced those people, through something like the Asian flu, to a population of five thousand. When the white man came into the Northwest, the Americans were fighting with Great Britain,

and there was a presidential campaign on. Both countries had to find some way to assert title to the Oregon country in order to fight with each other over who was going to get what. So the treaty commissioners went out and in some instances they were only able to locate one or two survivors of a band of Indians. And they signed treaties with those people in order to use those treaties in negotiations with Great Britain.

So how in the world can you talk about the Navajo Nation, which has 9 treaties with the U.S. and something like 160,000 population, and a treaty in northwestern Oregon where in 1851 there were only one or two people left, in the same breath?

What I suggest we do is to specifically identify vested rights, rights that Indians should have as property rights under the Constitution, and have Congress affirm those. A clear statement by Congress is the kind of constitutional protection that we need to keep states, non-Indians, and even the federal government itself from ruining things.

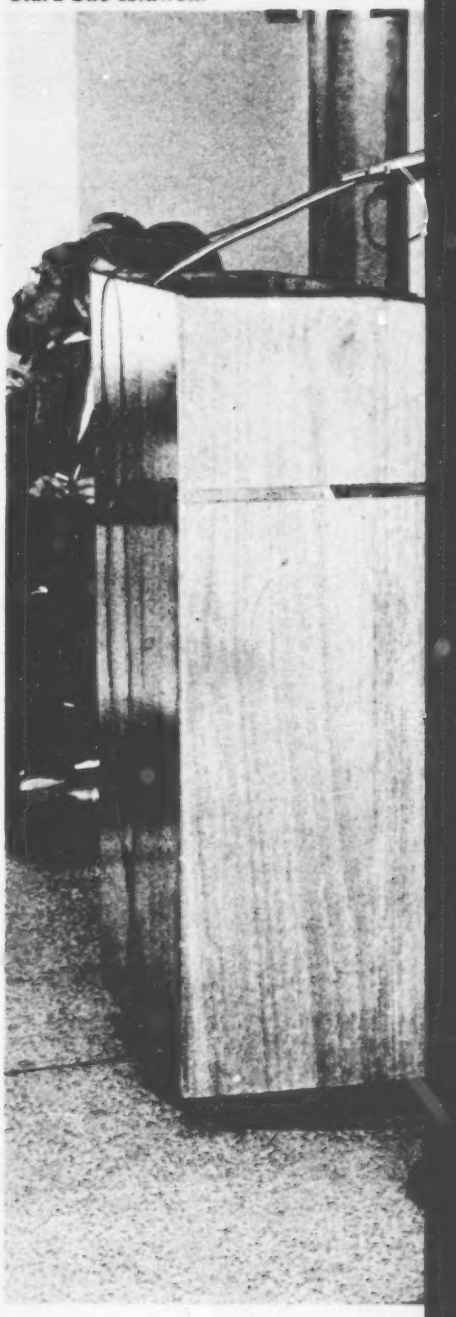
Case Studies:

One of my favorite jokes: General Custer stopped through the BIA office on his way to the Battle of Little Big Horn. He said, "Don't do anything until I get back."

This may be one of the reasons why we lack a contemporary consensus on Indian tribal sovereignty.

My research this year has taken me to the White Earth Chippewa Reservation in Minnesota, to the Choctaw Reservation in Philadelphia, Mississippi, and to the Makah Reservation in Neah Bay, Washington.

Clara Sue Kidwell.



I have interviewed members of tribal councils and I have asked the question, "What is tribal sovereignty?" Most of the people I talked to first offered me a definition and then said, "This is my opinion, I do not pretend to speak for anyone else." Finally, somebody said to me, "Well, when you find out what tribal sovereignty is, let me know."

The variety of definitions may stem from the fact that there are so many differences in situation and problems from one reservation to the next. Briefly, I will survey three distinct cases, based on my research this year.

The White Earth Reservation in Minnesota

The White Earth Reservation in Minnesota was created by treaty in 1867. By 1889 there was pressure on the federal government to open the rich pine lands in the northern part of Minnesota for exploration and exploitation. (This, of course, was after passage of the Dawes Act, which attempted to allot Indian lands on the basis of individual ownership.) By the provisions of the Nelson Act, the Chippewa and White Earth Reservation ceded a number of townships of pine timberland. The intent was that those lands would be sold for the well-being of the tribe, the money put into a trust fund, and the rest of the land allotted on the basis of individual ownership. By 1906 there was a provision that the mixed bloods on White Earth Reservation could sell their land.

When the timber companies came in with broken down horses and broken down pianos and all sorts of interesting goods — including a lot of alcohol — many Indians were persuaded to sell. There was a great scandal because of the loss of land on White Earth Reservation.

By the 1920s, the timber industry had boomed and people on the reservation had jobs. But by the 1930s, White Earth was in the depths of the great Depression; most of the individual Indian allotment land had been sold, much of it to timber companies, and a situation of poverty and despair had developed.

The situation of poverty persists in many respects to the present day. There were over seven hundred thousand acres within the original boundaries of the White Earth Reservation. Today there are approximately seven hundred acres of individual Indian trust land, allotment land that is passed down in the hands of Indian people. There are approximately fifty thousand acres of tribally held land. There are about fifty thousand acres of national forest land, including

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a game preserve. The rest of the land on the reservation, almost six hundred thousand acres, is in the hands of non-Indians. White Earth has a so-called checkerboard land holding pattern.

One of the major legal issues on White Earth Reservation concerns fishing rights, hunting rights, and the gathering of wild rice.

These rights were not specifically mentioned in the Treaty of 1867. However, there is a basic principle of treaty interpretation which says that if the rights are not specifically ceded to the government, then by implication they remain in the hands of the tribe. But the State of Minnesota has jurisdiction over the reservation lands under Public Law 280, which was passed in 1953 and extends state criminal and civil jurisdiction over Indian reservations in five states. Even prior to the passage of PL 280 the state had extended its jurisdiction over hunting and fishing.

Indian trust land was excluded from that jurisdiction for purposes of hunting and fishing rights before 1953. But because of the checkerboard pattern of the reservation, an Indian could shoot a deer on Indian land and then be arrested as he crossed non-Indian land on the way to his home, which could again be on reservation Indian land.

The confusion of jurisdiction was a major handicap to Indians in carrying out what they felt to be their traditional hunting and fishing rights, and their rights to gathering wild rice.

In 1972 a court decision granted the Indians of the Leech Lake Reservation jurisdiction over their own hunting and fishing rights on all public lands within the reservation, including Indian land and state and federal lands still held by the government. It did not extend blanket jurisdiction over non-Indians on the reservation. It did, however, allow the Leech Lake Tribal Council to levy a surcharge on state fishing licenses.

The surcharge money goes into the tribal council treasury to pay for enforcement of tribal hunting and fishing regulations on the reservation. It also assists Indian game wardens who are hired by the State of Minnesota on a contract basis to enforce regulations over Indian hunting and fishing. Since Leech Lake won this case White Earth has followed their lead in initiating a case in the courts. It is still under review and it really hasn't been pushed that much, which means that White Earth is still for the most part under state jurisdiction for hunting and fishing rights.

Other major legal issues in Minnesota are related to PL 280. The case of Bryan vs. U.S. said that an Indian who lived in a trailer house on reservation land was not subject to Minnesota personal property taxes. This is a rather limited decision, but it hopefully sets some precedent in the interpretation of PL 280 and how much power the civil and criminal jurisdictional procedures of the state have over the Indian reservation.

The Bryan decision would challenge the fact that the State of Minnesota has unlimited jurisdiction. However, if this jurisdiction is challenged, then there has to be something to put in its place, and the constitution of the Minnesota Chippewa Tribe, primarily set up to govern economic development, does not make specific provision for

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the establishment of tribal courts or the establishment of tribal systems of law and order.

If the Minnesota Chippewa Tribe revised its constitution to spell out specific areas of jurisdiction such as civil procedures and maintaining tribal law and order, then perhaps the potential vacuum that's been created by the Bryan decision would allow the tribe to challenge PL 280. This would mean assuming elements of jurisdiction over the reservation, becoming, in a limited sense, a sovereign nation again. This is not happening at the present time, but it is a direction that would affect the rights of tribal sovereignty on White Earth Reservation.

The Choctaw Reservation in Mississippi

The Choctaw Reservation is a quite different case. In 1830, under Andrew Jackson's removal policies, the Choctaw signed the Treaty of Dancing Rabbit Creek, giving up their rights to all lands east of the Mississippi River except where individual Indians took individual allotments. The bulk of the tribe then moved to Oklahoma.

But there was a remnant of about a thousand people who did not make the move, who attempted to sign up for individual allotments in the State of Mississippi. They were strongly discouraged from doing so by one particular Indian agent.

These Mississippi Choctaws were reduced very quickly to a virtually landless class of squatters, usually hiding in swamps, having very little to do with the dominant society.

The Mississippi Choctaw were neither white nor black. They had their own language and their own culture. This is a case, I think, where isolation reinforces identity, and identity reinforces isolation.

The Mississippi Choctaw persisted in the swamps as a distinct racial group with a very strong sense of language and culture throughout the 1800s, in spite of poverty, lack of educational facilities, poor health conditions, etc. These things eventually came to the attention of the federal government and a reservation was established in the early part of the century for the Mississippi Choctaw.

In 1974 a corporation that had been set up on the reservation attempted to acquire tax-exempt status, on the basis that it was on Indian land. A decision in the Fifth Circuit Court, a federal court, said in essence that the Mississippi Choctaw had no right to a reservation whatsoever, and that their land really wasn't Indian land because they had ceded all Indian land by the Treaty of Dancing Rabbit Creek in 1830.

Here you have an enclave of people with a very strong sense of identity, recognized as a reservation because the government purchased land for them in 1918, being told by a federal court judge that they don't have a reservation after all. This decision has been challenged now, and it comes down to a matter of jurisdiction. Does the State of Mississippi have jurisdiction over Choctaw as part of the lands in the State of Mississippi, or does the federal government have jurisdiction over the reservation since it created the reservation in 1918 and designated it as Indian land? This decision on the jurisdictional issue will reach the Supreme Court some time this year.

Choctaw is a scattered reservation. There are seven communities which are virtually distinct, and although there are about twenty

thousand acres of land, it is not all in one chunk — each community has about three thousand acres.

Choctaw land is in the sand clay hill section of central Mississippi, which is very poor land. There's really nothing in the way of economic development, mineral resources, agriculture, that can go on. Although the Choctaw have attempted to build an industrial park, and to lure various kinds of industry to their reservation, this has been largely unsuccessful.

As long as the legal status of the reservation is unclear, people on the tribal council are reluctant to seek further federal funds to develop the economic base on the reservation. When you talk to people about the plans for the reservation, they say they would do this or that except for the decision that declared the reservation doesn't exist.

In terms of tribal sovereignty, the Choctaw certainly have a sense of their identity, and a sense of their place, but there are legal constraints over what they will do. If they are declared a non-reservation, will they then lose their relationship with the BIA and all the funding that entails? Can they continue to apply for federal funding under various Indian desks?

All of these issues keep them from developing a true sense of tribal sovereignty and control. Essentially, the control right now rests in the hands of the United States Supreme Court and their decision on the status of the Choctaw reservation.[1]

The Makah Reservation in Washington

The Makah Reservation in the State of Washington is, relatively speaking, a rich reservation. It was created in 1855, by treaty between the Makah Tribe and the United States government.

The issue of fishing rights in the State of Washington is a very controversial one right now. The treaties that were made with the various tribes on the Olympic Peninsula and around Puget Sound all guaranteed to the tribes the right to hunt and to fish at their usual and accustomed places. These were generally places that were no longer on the reservations, so the tribes in essence were attempting to preserve the right to go off the reservation to fish in places where they had usually fished.

However, the State of Washington has several court decisions asserting that the Indians could not fish off the reservation unrestricted. If they fished off the reservation, they were subject to the same laws as everyone else in the state.

The language of the treaty said that the Indians were guaranteed the right to fish at their usual and accustomed places in common with other citizens of the state. In the State's interpretation, "in common with" means the state may regulate Indians as well as everyone else.

Indian tribes have argued, and some of these cases have been in the courts since the 1940s and '50s, that "in common with" means that Indians simply have the rights to fish in those places. Regulations came much later, and Indians should not be subjected to those regulations because their fishing rights were aboriginal rights guaranteed them by treaty.

[1]*The Supreme Court recently decided for the Choctaws in this case.*

In 1974, a court decision issued by a federal court judge in western Washington asserted that these tribes did indeed have the right to hunt and fish in common with other citizens of the state, and the judge's decision interpreted "in common" as meaning that the Indians had the right to catch up to fifty percent of the fish that passed through their usual and accustomed fishing grounds.

The usual and accustomed fishing grounds are salmon-bearing rivers of the state, and these are rivers both in the Puget Sound region and along the coast. Areas around the mouth of the river and along the banks of the river then would be preserved as Indian fishing grounds, and the Indians would have the right to take up to fifty percent of the fish.

The judge who issued this decision said essentially that fishing for Indians is a right protected by treaty and that fishing for non-Indians is a privilege that is granted by the State of Washington. The decision has caused an enormous outcry by non-Indian sport fishermen and commercial fishermen in the State of Washington.

The Makah have developed their fisheries on the reservation and now they are facing the prospect of being able to take many more salmon than they have in the past. At this time however they simply don't have enough boats or fishermen to take the catch to which they are entitled by this decision. Makah is therefore looking toward the development of its own resources in the way of fishing, which means working in conjunction with the United States Fish and Game Service, which is going to build a major hatchery on the reservation.

Ed Castillo, seated far right, talks with other participants.

For three years now the people have been saying, three years from now we're going to get our salmon fisheries. But it hasn't happened yet. They are still waiting for somebody to build the hatchery so they can start stocking the streams with salmon and develop the fishing industry.

Makah is unusual because of the richness of the reservation. It is facing some very complex legal and economic decisions on resource management and fishery development.

The Tribal Council vice chairman at Makah made one of the more interesting comments that I've come across. He said: the problem a Tribal Council has is that we have a group at Makah of five people who are essentially responsible for both running a profit and loss operation — economic development, selling timber for the greatest benefit, developing fisheries — and they're also responsible for providing social services to the people who live on the reservation.

No other form of government that I know of is really responsible for both elements in American society — the private enterprise profit motive, and social services. On a reservation you get one group of people, usually without a great deal of professional expertise, who bear the responsibility for all these things. Makah is, I think, floundering as to what to do with fishing rights, with their economic development and with providing services for the people.

The main impression I got from traveling to these three reservations is that Indian tribes derive most of their social services from federally funded programs like Title IV, the public health service, programs for infant nutrition, infant well-being, nutritional programs, senior citizen programs, etc. In other words, Indians have become adapted to playing the grantsmanship game. On the other

hand, that involvement with grantsmanship still places Indian tribes in a state of dependency upon the federal government.

Grantsmanship is not a source of money for capital development of industries on the reservations. At White Earth they want to start factories, but they can't get the capital for development. At Choctaw they would like to develop the industrial park, but they can't get the necessary capital. Makah, even with an economic base in sustained-yield timber, does not really have the capital to build on a large scale. They still have to depend on the U.S. Fish and Game Department to set up the hatcheries.

So, all in all, the tribes are dependent in a very significant sense upon the federal government. As long as this kind of dependency relationship persists then the idea of tribal sovereignty, in the sense of control over the way resources are developed on the reservation, is not going to exist. As long as there is no self-sustaining economic base on the reservation, people are still going to be dependent upon federally funded service-type programs that do provide jobs, but only on a very temporary and changeable sort of basis.

I would say that the emerging issues of tribal sovereignty are tied up very much with the legal decisions that have been made regarding the status of tribes, and with the need for some kind of economic development to provide social services and decent standards of living for people on reservations.

Ed Castillo

The history of the Indians in California is very complex. It is a history that includes three occupations by foreign powers; two of those powers spoke and kept records in a language that American scholars haven't dealt with a great deal. I am, of course, speaking of the Spanish and Mexican occupations. Very few people have a reasonable familiarity with the outlines of Indian history in this state, and most of these people are non-Indians. Traditionally, much of the body of history that Indian people themselves know on the reservations, in rural areas, and in the traditional families, is primarily band, group, and personal recollection history.

Our population has been greatly reduced, and because over the last few years we have gone through the same type of educational experience that many other people have, Indian history has been obliterated, wiped out. It's probably best described, as it is used in the education system now, as a painted backdrop. The Indians are on the painted canvas in the background, in the foreground all the main figures are non-Indian. It is the responsibility of Indian people and the responsibility of scholars who deal with Indian people to help us put our history back together.

We have to be sure that when we construct our histories we relate to living Indian people the information of the past. The scholars of the past — primarily historians and anthropologists — have not consciously made that link. I have read environmental impact reports from archaeologists who say there is no problem with digging up an Indian burial ground, there is no problem with plowing through this village, or with sending out a bunch of graduate students to collect

artifacts from a village or grave site that's going to be destroyed. They say these things because they say there is no "absolute proof" that these sites are related to living Indians, who might live just two miles down the road on the reservation. That is a total insult to Indian people. Indian people know where their relatives are buried and many of the traditional Indians know where traditional sites were.

The problem, then, is making good information available. We have bills in the legislature, as all of you probably know, that threaten the existence of the Indian community, that challenge Indian resources. There is constant attack by outside groups, who try, whether consciously or unconsciously, to chip away at the integrity of Indian tribalism and Indian traditionalism.

I'd like to give you an example of the kind of concern traditional people have about their land and traditions today. There is a small town outside of the Yosemite Valley, a little town called Coarse Gold. Just outside of Coarse Gold is a community called Alani.

In that little community there is a roundhouse, a sacred ceremonial house of the Mono people. Roundhouses, which were kept by family and clan groups, were usually burned when the family or group either lost the power or died out. For some reason this house wasn't burned. It was, however, on an allotted piece of land that became taxable, and the Indian family lost the land.

For several years now the land — with its roundhouse, several archeological sites, and two Indian graveyards — has been owned by a non-Indian family who use the roundhouse as a corral and chicken coop.

The Chachansi-Mono people, who are in the midst of revitalizing many of their traditional beliefs and ceremonial patterns, want to gain access to and control of the Alani roundhouse, as it is called.

The man who owns the roundhouse wants to sell it. He's been advertising "Buy Your Own Indian Graveyard" in the Fresno newspaper. Come and dig it up . . . Do anything you want with it.

Some people who are concerned about this got together, created a group called the Suma Indian Association, and tried to buy the roundhouse. But the man wants $80,000 for it; that is a lot of money for a piece of land in that territory. He does have a nice modern house on it, but the Indian people are more concerned about the roundhouse.

Last year a State Parks and Recreation bill to buy that site and another one was defeated in the Senate. The bill provided that the State Parks and Recreation Department would buy the land and put it in trust. The Suma Indian Association would then, hopefully, hire an Indian person to live in the house, to protect the site, and to revitalize it. The people want to start using that roundhouse again.

There's a good possibility that the bill will pass this year in the legislature. And this is an excellent example of Indian concern, and of what good historical information, brought up to the living present, can do to help Indians maintain their traditions.

There are many other similar examples in California today, from the controversy over whether an interstate highway should cover a ceremonial site, to Navy control over an Indian sacred place. In all of these examples my own personal commitment is to put my knowledge and my training to work for living Indian people. There is so much of our history living in people today; it's something I want to save.

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Indian Sovereignty in the Americas and in the International Community

— Roxanne Dunbar Ortiz

Ed. Note: Dr. Ortiz attended the United Nations World Conference to Combat Racism and Racial Discrimination in Geneva this August. She reports that this is the first conference on racism to be organized by the United Nations to raise questions about the status of indigenous peoples. The United States boycotted the conference, and other former colonial nations walked out.

The Conference Final Declaration and program of action asserts the right of individual peoples to control their natural resources and wealth, to maintain their culture, language, and religion intact, and to be guaranteed civil rights within the country in which they live.

The International Indian Treaty Council is one of the organizations I work with. I had doubts about the importance of international work on Indian issues because the immediate situation in this country is so severe and involves the very question of survival for Indian people. I had a very conservative view of the usefulness of the international context, but I did commit myself to working on organizing for the Geneva Conference; and I did go to that conference to work as a staff person.

Since that time, since last September, I've come to have a sense that this is important work; it provides information that Indian people should know about. They should know that they have access to international bodies on some issues. I don't think all else should be set aside for this work, but I do think that on many issues Indian people can be strengthened by international support and by the kinds of pressures that could be brought to bear on the United States and on other governments that Indian people live under in Latin America and Canada. That, to me, is the most important thing about the Geneva Conference.

I would say that in international communities more is known about the Indian question than is known by most of the American public in this country. This is unfortunate because the American public should know more on Indian issues and the need to support Indian rights. Nevertheless, international support is also important.

One thing I've come to understand in working on treaties is that treaty rights are one aspect of a body of international law, and not necessarily the most important aspect. What is most important is the whole field of human rights. I think most of us in America are kept ignorant of the field of human rights. We're given Carter's interpretation of human rights, which is completely erroneous because he is talking about individuals — dissident individuals. That's not what the human rights question is about in international law.

The Declaration of Human Rights was a part of the original Charter of the United Nations in 1948, and it covers many, many aspects of modern life. This original Charter of the United Nations puts a limitation on the authority of nations in terms of the rights of groups, persons, or peoples. It says that states or nations cannot engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms put forth in the Declaration of Human Rights.

To put this in context, the United Nations was born in 1948, in a period of decolonization, a neat word for the uprisings of oppressed peoples all over the world. The colonialist nations wanted to find ways to extricate themselves from the situation without losing the colonial framework altogether. Their purposes were not entirely humane and they certainly haven't let go of many of the oppressive elements of colonialism. But one thing is for sure, every country in the world, and particularly the former colonial powers, including the United States, wants to have a certain facade of respect for human rights.

International work is useful in embarrassing a country that is not following human rights agreements. The United States has done a very good job of keeping itself from being embarrassed, particularly concerning its domestic situation. I have found that people who make themselves very well aware of what is going on in the world, who know of the Indian situation and have been aware in the past of the civil rights movement and the situation of Blacks in this country, have no knowledge whatsoever of the situation of undocumented workers in this country — Mexicans, Chicanos, and Filipinos. This was something entirely new to them. That's how effective the U.S. is in keeping information out of international circles.

The area of self-determination is very important for Indian people to know about. There is a body of law concerning the right to control of natural resources in a people's territory. This is very clearly put forth in the Declaration and also has been reinforced by a number of declarations in the General Assembly. It is based on the principle of equality and on the rights of peoples and nations to self-determination.

The right to control natural resources means that peoples have permanent sovereignty over their natural wealth and resources, and that this sovereignty must be exercised in the interest of their development and for their well-being.

The U.N. Charter states that all peoples shall have the right to self-determination. But it adds that inadequacy of political, economic, social, or educational preparedness should never serve as a pretext for delaying independence and self-government.

Self-determination of peoples means, in part, that all peoples have the right to freely determine without external interference their political status and pursue their economic, social, and cultural development. And every nation has the duty to respect this right in accordance with the provisions of the Charter. I think it is clear that the United States must answer some questions about the self-determination of Indian people if it wants to continue having a legitimate role in the world community.

I will speak from my experience, as little as it has been. I find tremendous support internationally for Indian people in this country. I think the same kind of support can also come nationally, but it will take a profound process of education to accomplish that.

Pow-wow participants. Foreground, Teles Goodmorning, elder of Taos Pueblo.

— Tom Davies

Many people far more qualified than I have already spoken or will speak to you about the past and future of Native Americans in the United States and Canada, but for the next few minutes I want to say a few words about the political experience of the indigenous peoples of Latin America.

Before the arrival of the European in the 15th century, there existed, in what we now call the Americas, some of the most advanced and sophisticated civilizations in the history of mankind. Several highly developed civilizations had already risen, and in some cases fallen, in Latin America.

One must always begin with the Maya of Mexico and Central America. Their achievements in mathematics, astronomy, writing, and architecture were truly extraordinary. They had the only phonetic alphabet and writing system before 1500 B.C., and by 400 B.C. they had discovered the concept of zero. They then devised the second most accurate calendar in the history of man (Modern—365.2422 days per year; Gregorian—365.2425; Mayan — 365.2420), 3/10,000 of a day better than the Gregorian and only 2/10,000 shorter than that worked out by modern computers.

They built large and architecturally dazzling cities. We don't know exactly how many, but there were one hundred and twenty, at least. Some were enormous; Tikal and Copán, Chichén-Itzá and Uxmal and Mayapán all had populations of over two hundred thousand, a staggering figure when one considers that the Maya lacked the wheel, the hoist, or beasts of burden. I remind you that Paris and London were but dirty little villages at this time, and they had both the wheel and the hoist.

In South America there were the empires of the Chimú with their capital of Chan-Chán, which had a population of over one hundred thousand in 1000 A.D. There were the great artists — the pottery and textiles of the Mochica, Nasca and Paracas peoples rivalled anything in the world at the time for sensitivity, design, and form.

And then, of course, there were the Incas who, in my estimation, constructed the most highly integrated and most successful political, linguistic, cultural, and economic empire in world history — an empire which was held together in no small way by an incredible road system which allowed Inca runners (Chasquis) to cover the 300 miles from the coast over a 15,000-foot pass to 11,000-foot-high Cuzco in 30 hours, and the 1,000 miles from Cuzco to Quito, Ecuador, in 5 days. I dare anyone to accomplish that feat today in anything but an airplane.

The arrival of the European, however, forcibly truncated this great cultural development. The millions of people who had created so much were reduced in numbers and enslaved. Indeed, the most horrible immediate result of the conquest was the frightful loss of Indian life.

In 1519, Central Mexico had an indigenous population of around twenty-five million. By 1532 it was down to 16.8 million — falling drastically to 6.3 million by 1548 and 1.4 million by 1595 — a reduction of 92.5% in 76 years.

In South America, the population of the Inca Empire in 1530 was approximately 15 million. It fell to 1.5 million by 1571 and 1.2 million by 1586 — a reduction of 92% in 56 years. Furthermore, unlike Mexico where there was a gradual population increase after 1650, the Amerindian population of Peru continued to decline, reaching 600,000 by 1795, or an overall decline of 96%.

The principal killer was disease — smallpox, diphtheria, measles, chicken pox, and cholera — but there was also a horrendous loss of life due to physical abuse and torture, enslavement, and systematic destruction of Indian culture which resulted, as it always does, in widespread suicide, infanticide, and abortion.

Prototypical of the Spanish insensitivity to Indian rights and culture was the infamous Requerimiento. This document, a summary of Christian history from the creation of the world to the 15th century, was to be read to the Indians — by interpreters if possible, if not, in Latin, who cared? — at the beginning of every battle.

It required the Indians "to recognize the authority of the church, pope, and monarch, and it further detailed, in graphic phrases, the consequences should they refuse . . ." Those consequences included enslavement, loss of property, and punishment as traitors. The record had to be witnessed, signed, and notarized on each occasion and "it was held to absolve the conquistadores of all responsibility and to free them from suspicion of aggressive war."[1]

From that glorious beginning, it was all downhill. Few voices were raised against the systematic exploitation and decimation of the Indians throughout the colonial period. A few Franciscan, Dominican, and Jesuit friars, such as Bartolomé de Las Casas, did protest, but their efforts usually went to naught.

The only visible church Indian program was the highly paternalistic system of Jesuit Reducciones in Brazil and Paraguay, and the Dominican and Franciscan Missiones in different parts of the empire, including San Diego and California in general. Although they were designed to protect the indigenous population from exploitation and death by the civilian population, the results, as you all know, were at best mixed. Too often one type of exploitation was substituted for another.

The exploitation and oppression after Independence was even worse because the few protective mechanisms which were found in the massive Laws of the Indies were gone.

Indians in the 19th and 20th centuries in Guatemala, Ecuador, Peru, Bolivia, and elsewhere have low caloric intakes in diets almost devoid of protein. They have no access to medical facilities, and diseases such as typhoid, diphtheria, and tuberculosis are pandemic.

They have been systematically robbed of their lands and forced into quasi-feudal labor relationships which have differed from slavery in name only. As late as 1971 in Peru, hacienda for-sale ads still told how many families came with the land.

The extent of exploitation of Indians by hacendados is difficult to imagine. The owner of the land is the *tai tai*, or patrón, and he literally has powers of life and death over his workers. Hacienda work requirements are so heavy that the Indians do not have sufficient time

[1] *Charles Gibson, Spain in America (New York: Harper and Row, 1966), pp. 38-40.*

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to work the miserable little plots that they are given in exchange for 28 days of work a month. Fines and penalties for such infractions as absence due to sickness, failure to obey orders, or breaking a tool are levied to keep the Indians in perpetual debt — a condition which is passed from father to son.

Since the hacendados control all local offices and hold an influential position in the national society, the Indians have no recourse except to rebel. These rebellions are brutally suppressed and the Indians are oppressed even further. The hacendado lives in splendor on the free labor of the Indians and for this reason is often referred to in Peru as a *gamonal* or parasite.

The pattern of relationships between European and Amerindian was established during the colonial period and has continued to plague Latin America until the present. Extensive laws protecting Indians, issued during the colonial period, failed to integrate the indigenous population into the society. Spanish was the official language of the viceroyalties of Mexico and Peru, but Indians continued speaking Nahuatl, Mayan, Quechua, or Aymara. In spite of assiduous missionary work by priests and various colonial officials, Indians were barely Christianized and usually practiced their own religion within a Christian disguise.

The entire system was designed to prevent the Indians from developing new needs, thereby reducing the danger of revolt. In reaction, Indians adopted the protective mechanism of unresponsiveness and became servile. The Indian's only concern became self-preservation, the survival of his family.

The inability of Spanish policy-makers to cope with the Indian problem was but a prelude to the difficulties faced by republican leaders. There are political, economic, social and educational facets to the problem, but the principal consideration remains cultural. The conquest of Latin America did not represent the victory of one Western European nation over another, but rather the subjugation of a totally alien indigenous culture.

Spanish options were few. They were a foreign minority trying to govern a vast Indian empire, and they demanded total Indian obedience instead of seeking to work through the process of acculturation.

Republican leaders, on the other hand, had a greater range of options, but they also faced greater responsibilities in that their ultimate goal was the creation of united, integrated nations, not the development of an efficient imperial administration.

At least three options were open to politicians in the early years of the Latin American republics. First, they could have tried to integrate the Indians forcibly by systematically destroying their institutions and culture, thereby converting them into dark-skinned copies of their former masters. Many Peruvians and Mexicans felt this to be the only viable answer, but the Spanish had undertaken similar programs and failed because of Indian resistance and a lack of both material and manpower resources. Similar republican attempts were likewise doomed to failure for the same reasons.

A second option would have been for the governments to leave the Indians completely alone or even to segregate them on reservations, as was shamefully done in the United States and Chile.

This procedure was never considered in most of Latin America except by a few indigenistas in Peru and Bolivia in the 20th century who had the same kind of protective paternalistic attitudes as the Franciscans. Since the entire Latin American agrarian structure depended upon the existence of a steady Indian labor supply, such a solution would have required a total alteration of the existing economic and social structure.

The third option would have been to allow the Indians to integrate themselves peaceably, if they so chose, while at the same time providing government protection for their lands and culture through national legislation. This was and is the most equitable solution, but most Latin American legislators conceptualized the problem much more narrowly. They felt that with the passage of certain Indian legislation the Indian would discard his way of life and be miraculously integrated into the society. They failed to realize both that Indians were usually prevented from exercising their rights under the law and also that many simply did not wish to do so.

After all, what they were saying to the Indian peoples was: throw away your language, your culture, reject your gods and your clothing and copy us, and then we will talk to you. That isn't something to talk about — that is something to cry about.

Many politicians, scholars, and church leaders of all brands have offered many different solutions for the integration of the indigenous populations of Latin America — and indeed of the United States, but the fact remains that a key ingredient is missing in most of their solutions. No politician or government official has ever sought out the advice and counsel of the Indians themselves. Laws were passed and government agencies created without consultation with the Indians as to what they perceived to be their problems and the solutions.

Without even minimal Indian input, government officials and administrators in Latin America could only propose Western European solutions to the problems of non-Western European peoples. The failure of the Indian affairs bureaucracy in the 20th century, therefore, was due not only to hacendado and right-wing opposition, but also to the general cultural ignorance of the administrators involved.

Undoubtedly the only solution to this particular problem is to request and encourage Indian participation. This did not happen in the past because of the Indians' lack of economic and political power, and future governments in Latin America must concern themselves with overcoming that obstacle.

That is not to say, however, that the mass of pro-Indian laws and programs of the last fifty years are worthless. On the contrary, they can and should serve as the basis for the legitimacy of the Indians' demands when they come to be made. Only when the Indians themselves demand their implementation and become sufficiently organized to back such demands with power will the laws enacted by earlier reform-minded Latin Americans become reality.

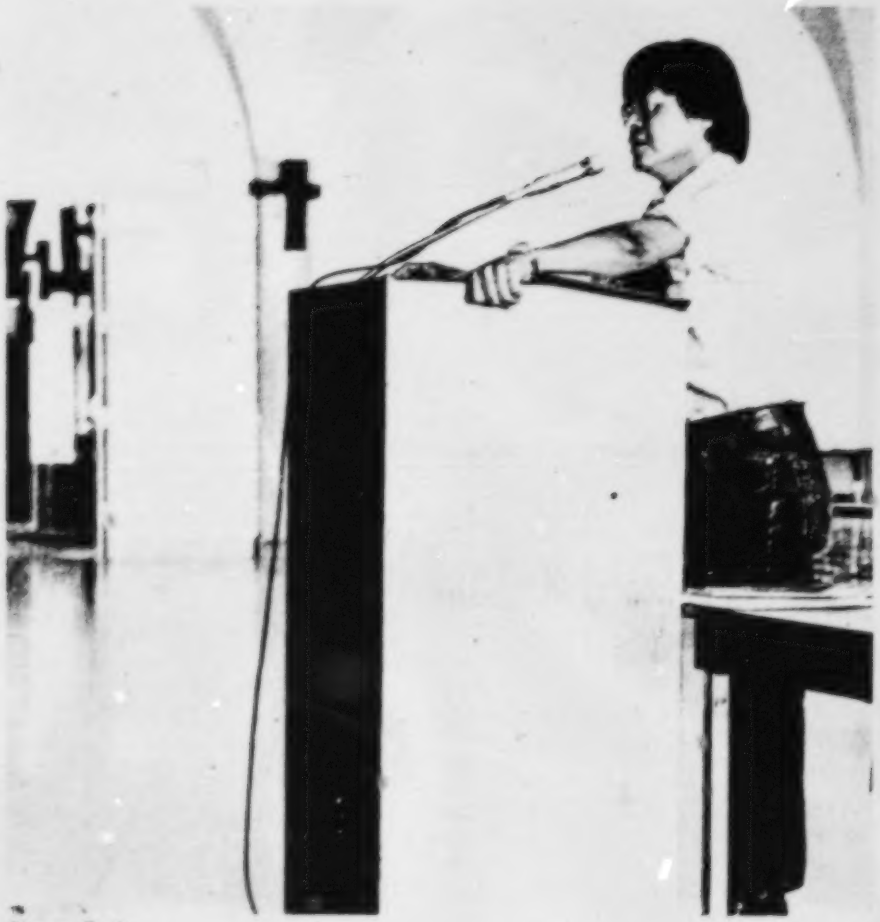
The Last Word

All the traditions that I'm familiar with, whether they be dramatic rituals, anecdotal histories, narratives, cycles or specific incidents in history, speak about a source: where people came from.

Wherever it all began, when the elements came together there was fire, there was water, there was earth. When people recognize this beginning it gives them a significance.

Land is the source of physical and spiritual life. People reaffirm their relationship to the land by telling of this relationship, making the telling their document for owning, protecting, or fighting for it. Never a moment, never a day passes by without telling something about the land. And not only how to plant it, not only its spiritual and religious nature, but giving it a political nature too. That's what oral tradition does. It constantly reaffirms, it constantly gives substance to our development.

Simon Ortiz
Acoma



Simon Ortiz.

Survival This Way

Survival, I know how this way.
This way, I know.
It rains.
Mountains and canyons and plants
grow.
We travelled this way,
gauged our distance by stories
and loved our children.
We taught them
to love their births.
We told ourselves over and over
again, "We shall survive
this way."

Simon Ortiz